

RESPONSES TO PUBIC COMMENTS

MR. DAVID MERK, PORT OF SAN DIEGO LETTER DATED SEPTEMBER 27, 2004

The comments received from the Port of San Diego (Port) are indicated herein by regular font after a bolded introductory phrase identifying the paragraph/section of concern (e.g., **Paragraph 1**). For each comment, the RWQCB staff response is indicated in italicized font after the introductory phrase “**RWQCB Staff Response**” (e.g., **RWQCB Staff Response**: *Comment noted.*). Underline and ~~strikeout~~ text have been used to further emphasize additions or deletions to the text of the tentative Order.

Paragraph 1: When Cleanup and Abatement Order (CAO) 95-21 was initially issued and prior to full site characterization, it indicated a need to dredge 17,000 cubic yards of sediments. Since that time, additional site characterization was completed in 1999 in accordance with CAO 95-21. This additional characterization showed that approximately 180,000 cubic yards of dredging would be required if dredging were the remedy selected to implement and comply with CAO 95-21. The District undertook an analysis of alternative remedial programs based on this new information, as noted in Paragraph 3

RWQCB Staff Response: *Comment noted.*

At the end of Paragraph 3, there is a reference to Addendum No. 3 of CAO 95-21. To the District’s knowledge this addendum was never issued. While the addendum was still in draft form, the District and the RWQCB instead entered into a separate agreement whereby the District agreed to proceed with the site’s cleanup. In accordance with that agreement, to date, the District has spent more than \$16.2 million to address the site’s landside remediation and development of the sediment cleanup required by CAO 95-21.

RWQCB Staff Response: *Finding No. 1 of tentative Order R9-2004-0295 has been revised to read as follows:*

1. *On May 24, 1995, the Regional Board Executive Officer issued Cleanup and Abatement Order (CAO) No. 95-21 to Campbell Industries and Marine Construction and Design Company Holdings, Inc establishing cleanup levels at the Campbell Shipyard for upland soils, groundwater, and offshore bay sediments adjacent to the Campbell Shipyard wharves and boat ways. Cleanup and Abatement Order No. 95-21 required the clean up of approximately 17,000 cubic yards (cy) of contaminated bay sediment containing elevated concentrations of polychlorinated biphenyls (PCBs), copper, zinc, lead, tributyltin (TBT), polynuclear aromatic hydrocarbons (PAHs) and total petroleum hydrocarbons that have accumulated at the former Campbell Shipyard waterside leasehold in Central San Diego Bay sediments over the years. Addenda Nos. 1 and 2 to Cleanup and Abatement Order No. 95-21 were issued by the Regional Board Executive Officer to establish additional sampling requirements, to establish a cleanup level and time schedule, and to extend the time schedule. Addendum No.*

3 added the Port of San Diego (Port) as a responsible party identified in Order No. 95-21 (and addenda thereto) and changed the title of the Order to reflect that modification. On February 21, 2001. On February 21, 2001, the Regional Board adopted Resolution No. 2001-45 rescinding Addendum No.3 to Order No. 95-21 as a result of the Port entering into an agreement with the Regional Board, in February 2001, wherein the Port agreed to conduct the cleanup. A new Addendum No. 3 was issued June 15, 2001, concerning soil and groundwater contamination at the former shipyard. Currently, shipyard operations have ceased and existing structures have been removed and demolished.

Paragraph 4 states that a 1-acre shallow subtidal habitat portion of the cap will be created. Additional eelgrass has been discovered on-site requiring the need to increase the shallow subtidal habitat area to 1.6-acres.

RWQCB Staff Response: *The tentative Order was revised, Finding No. 4, to reflect the increase in the size of the habitat cap from 1 acre to 1.6 acre due to the presence of more eelgrass than previously documented. The revised Finding now reads as follows:*

On July 30, 2004, the Port submitted a report entitled “60% Basis of Design Report.” The report describes the 9.2 acres remediation project to be conducted on the former 12.9- acre leasehold area formerly occupied by the Campbell Shipyard, and extends along about 1,200 linear feet of shoreline. The project will consist of dredging 35,900 cubic yards of sediment, creation of 1.6 acres of shallow sub tidal habitat, demolition of the existing shipways and marine rails, retrofitting an existing mole pier, repair and reconstruction of 1,230 feet of existing seawall, placement of rock revetment in front of the existing seawall, potential construction of a 90-foot wave attenuation panel to protect the shallow sub tidal habitat area, and extension of a storm drain.

Paragraph 15(b): The gravel layer of the habitat cap has been removed from the design based on discussions with the federal and state resource agencies. The habitat cap will be 3-feet thick, not 4-feet. The wave attenuation panel has also been removed based on discussion with the resource agencies and environmental groups to prevent driving anything through the cap.

RWQCB Staff Response: *The tentative Order was revised to reflect the change in cap design – the elimination of the gravel layer – and to correct an error in the total cap thickness. The habitat cap will consist of a 1-foot layer of sand, a geotextile layer, and an additional 2-foot layer of sand (mixed grade). This will provide habitat for burrowing organism, provide a sufficient thickness to prevent the migration of contaminants, and the geotextile layer will prevent burrowing and bioturbation. The gravel layer was eliminated at the request of California Department of Fish and Game, the U.S. Fish and Wildlife Service, and National Marine Fisheries Service. Finding No. 15(b) now reads as follows:*

Habitat cap: The habitat cap will be comprised of 1.6-acres of eelgrass habitat area. The design of the habitat cap includes a base layer of sand overlain by a geotextile layer, ~~a one foot layer of well graded gravelly aggregate material to act as a protective layer for the geotextile,~~ and a final layer of two feet of poorly-graded sediments with grains sizes ranging from medium to coarse sand to provide a suitable substrate for to support the overlying eelgrass habitat. The function of the geotextile layer is to help isolate any underlying residual environmental pollutants and protect against bioturbation into the underlying sediment.

Other structural elements, including a containment berm ~~and potential wave attenuation panel~~ are proposed to protect and/or enhance the stability of the cap system.

Paragraphs 6, 17 and E.11: The draft WDRs state that the District "must provide assurances of financial responsibility to ensure that funds are available to maintain, monitor and repair the cap in future years in the event the Port fails or refuses to respond in meeting obligations associated with the cap." The District, however, had indicated in its WDR application, and continues to maintain, that a request for proof of financial assurances is not appropriate in this case. The District is a public entity, established by the State of California to, among other things, "protect, preserve, and enhance. . . (2) the natural resources of the bay, including plant and animal-life, [and] (3) the quality of the water in the bay." In this case, the District is responding to correct a release of a hazardous substance on public land by third parties. As such, the District does not believe that financial assurances are required and, as described below, believes the amounts calculated are unjustified.

The amounts identified as requirement financial assurances appear to be based upon a potential misunderstanding of the project and how it will be funded. The WDRs are being sought for, in effect, a "closure" activity. Therefore, there is no need to provide independent financial assurances for a closure sometime in the future, as would be the case if we were seeking a permit for an operating landfill. Here, as noted in our WDR application, the District has allocated sufficient funds in its Capital Development Program (CDP) to complete the cap's construction at an estimated \$15.8 million. As such, even if financial assurances would be required for the current project, we believe that the CDP meets this goal. The proposed \$21,589,000 requiring financial assurances, therefore, should be reduced by the cost allocated for construction of the cap, or \$15,778,000. Second, costs going forward for monitoring and maintenance, which is the RWQCB has estimated require financial assurances in the amount of \$561,000, will be allocated from the District's major maintenance budget. The District is a self-funded special district with an annual CDP of approximately \$150 Million. The District will continue to act as a trustee of state tidelands in carrying out its environmental obligations. As such, we do not believe that any additional financial assurances are required for post-closure maintenance and monitoring. Finally, financial assurances for corrective action, pursuant to 27 CCR § 22221(a), are only for reasonable foreseeable releases." It appears as though the \$5,250,000 for corrective action set forth in the tentative WDRs includes construction of

a new cap and is not necessarily limited to reasonably foreseeable releases as required by the regulations.

In the event that the RWQCB determines that financial assurances other than those set forth above should be required of the District, we believe that those mechanisms identified as being acceptable for public entities, pursuant to 27 CCR § 22228, should be considered.

RWQCB Staff Response: *We do not agree that the Port District is exempted from requirements to provide evidence of financial assurances. Finding No. 6 remains as included in the tentative Order. Our original Finding No. 17 was based upon a set of general assumptions and information included with the Port's 60% Design Document. However, after further discussion between the Port and RWQCB staff has clarified some financial aspects of the project. Therefore, the following revisions were made to tentative Order R9-2004-0295:*

Finding No. 17 has been completely revised and replaced with the following:

17. *Implementation of cleanup and abatement actions, including installation of an appropriate cap to isolate sediments containing residual shipyard waste, will cost approximately \$15,778,000; the Port has included approximately \$15,778,000 for this purpose in its Capital development program for FY 2003-2007, as approved by the Board of Port Commissioners by Resolution No. 2003-71. This provides satisfactory assurance that Port will be able bear the financial responsibility for closure.*
18. *Post-closure maintenance and monitoring at the de facto waste management/residual waste containment cell will cost approximately \$18,700 per year; shipyard waste will continue to present a threat to water quality indefinitely; the present value of indefinite post-closure maintenance and monitoring amounts to \$561,000; in addition, it may cost up to \$500,000 to ensure cleanup and abatement for reasonably foreseeable circumstances that cause or threaten to cause discharges of waste from the containment cell to waters of the state in San Diego Bay in a manner that might cause or threaten to cause conditions of pollution or nuisance.*

Paragraph 13: The last sentence in this paragraph says that the future discharges of urban runoff could recontaminate the cap. This possibility was analyzed in the project's Environmental Impact Report as referenced in the tentative WDRs. Our analysis, based on contaminant concentrations in Switzer Creek at the time of the study, is that recontamination above CAO levels did not appear likely. Regardless, the potential problem is common to all sediment remedies. The District would welcome assistance from the RWQCB to reduce impacts of urban run-off to the cap.

RWQCB Staff Response: *The EIR did evaluate the possibility of recontamination of the cap from discharges from a storm drain and the mouth of Switzer Creek. The EIR found that recontamination of the cap from urban runoff was unlikely, but the potential still exists. The Port must ensure that storm water discharges do not adversely impact the integrity of the cap or cause pollutants to accumulate upon the cap. This may require that the Port revise the proposed project to include a modification to the location/discharge point of the current storm drain configuration that would result in discharges onto the cap. To that end, the tentative Order has been revised to include another Discharge Specification, Section C.2(m), as follows:*

Storm water discharges from Municipal Separate Storm Sewer System (MS4s), including storm drains, shall not result in erosion or scour of the cap; or deposition of pollutants upon the surface of the cap.

To address the issue of potential of recontamination, the monitoring requirements for urban runoff were changed in the tentative Order and Monitoring and Reporting Program. Rather than require the Port of San Diego to monitor storm drain and Switzer Creek outfalls on a regular basis, the Port is now required to conduct that monitoring if concentrations of contaminants of concern are found above action levels on the engineered and/or habitat caps. The regular monitoring of the storm drain and Switzer Creek was removed from Section F.3 of the Monitoring and Reporting Plan. However, the discharger is required to collect and analyze sediment samples from the 30-inch storm drain and Switzer Creek in the event that concentrations of contaminants of concern (COCs) are determined to be above the “action level” concentrations indicated in Discharge Specification C.2(f) of Order R9-2004-0295. The collection and analysis of sediment samples from the storm drain and Switzer Creek is now a requirement under Section J (Contingency Monitoring Plan (Section J) of the Monitoring and Reporting Program.

Paragraph 16: The purpose and origin of paragraph 16 is unclear and confusing and should be explained or deleted.

The table listed in paragraph 16 appears to be excerpted from a Memorandum of Understanding between the District and members of the San Diego Bay Council dated August 27, 2004. Under this agreement in paragraph 2.a.i. the District agreed that, in the event levels of contaminants within the surface of the cap were found to be met or exceeded, the District would conduct a study to determine whether the elevated levels were caused by a failure of the in the design or construction of the cap, loss of the integrity of the cap, or background conditions. In the event that it is determined that there is a design or construction failure, or breach of the cap, the District agreed to develop and execute a plan to correct the problem. The parties referred to these levels as “Action Levels” because action would be required if they are not met or exceeded within the surface of the cap. The addition of these action levels outside of this context in the tentative WDRs is confusing and inaccurate, because it does not define the limit of applicability of these levels in the monitoring program of the cap’s surface. A suggested change is to add that:

If monitoring of the cap's surface detects contaminants in excess of the stated levels, an investigation of the source and extent of the excessive levels will be performed, and if a release from the cap has been determined, a remedial plan will be developed to correct the release.

RWQCB Staff Response: *Finding No. 16 has been revised (and renumbered to Finding No. 17) in the tentative Order. The revised Finding now reads as follows:*

17. ~~The engineered cap is intended to provide effective and permanent isolation of environmental pollutants above the following concentrations in bay sediments:~~The Port proposes to design, construct, and maintain the offshore engineered cap system to provide effective and permanent isolation of residual shipyard wastes and to prevent environmental pollutants from exceeding the following concentrations in bay sediments:

Contaminant of Concern	Concentration (mg/kg) Dry Weight
<i>Copper</i>	<i>264</i>
<i>Lead</i>	<i>88</i>
<i>Zinc</i>	<i>410</i>
<i>Total Polyaromatic Hydrocarbons (TPAHs)</i>	<i>3.47</i>
<i>Polychlorinated biphenyls (PCBs)</i>	<i>0.11</i>
<i>Total Petroleum Hydrocarbons (TPH)</i>	<i><14</i>
<i>Tributyltin (TBT)</i>	<i>0.121</i>

The sediment concentrations of the contaminants of concern (COCs) specified above are consistent with the sediment cleanup levels (in Finding No. 2 of this Order) established by Cleanup and Abatement Order No. 95-21 and addenda thereto.

Paragraph 17: As mentioned above, the District believes it should be exempt from financial obligations for its response actions at the site.

RWQCB Staff Response: *We do not agree that the Port District is exempted from requirements to provide evidence of financial assurances to the RWQCB. Finding No. 6 remains as originally included in the tentative Order. However, both Finding No. 17(see above) and Provision No. 11 (see below) have been completely revised and replaced in the revised tentative Order.*

Paragraph 18: The District believes that it should not receive the maximum threat to water quality and complexity ratings in accordance with Title 23 California Code of Regulations section 2200. Rather, due to the project's restoration and improvement of the site's beneficial uses and the effectiveness and simplicity of the cap's design, it should be

given the lowest threat to water quality and the lowest complexity factors in calculating the proposed annual fee for the WDRs.

Category 1 is for discharges causing a long-term loss of beneficial use of the receiving water. This capping project is designed to eliminate any discharges. The 2-foot sand layer is designed to absorb any contaminants that may leach from the underlying sediments, preventing any degradation of the receiving water. Category 2 refers to short-term violations of the receiving water. Again, the cap is designed to eliminate any discharge to the receiving water. Category A refers to toxic waste discharges. The cap design will prevent any toxic discharges through the sand absorbing any contaminants. Category B refers to treatment systems. This capping project is not a treatment system. Therefore, the threat to Water Quality should be Category (3)(c).

RWQCB Staff Response: *The tentative Order has been revised to include a Threat to Water Quality (TTWQ) and Complexity (CPLX) ranking for the proposed de facto waste management unit to category “2-B.” The rationale for this ranking is based upon the following rationale, criteria, and requirements of CCR Title 23, Section 2200:*

CCR Title 23, Sec. 2200: *Category “2” – Those discharges of waste that could impair the designated beneficial uses of the receiving water, cause short-term violations of water quality objectives, cause secondary drinking water standards to be violated, or cause a nuisance.*

The cap system is designed to isolate residual wastes containing environmental pollutants from the surface waters and sensitive beneficial uses of San Diego Bay. The potential pollutants include metals (copper, lead, zinc) and polychlorinated biphenyls (PCBs). Concentrations of waste constituents, including metals and PCBs, were determined to be above background concentrations in bay sediments, as detailed in Cleanup and Abatement Order No. 95-21. These metals and PCBs are classified as bioaccumulative constituents. As such, the long-term presence of these waste constituents in bay sediments poses a threat to existing designated beneficial uses of San Diego Bay by benthic aquatic organisms and a potential threat to the food chain via the process of bioaccumulation. The failure of the cap system could result in the release of environmental pollutants to a degree that may cause a short-term violation of water quality objectives and an exposure of benthic aquatic organisms thereby creating an impairment of designated beneficial uses in San Diego Bay.

CCR Title 23, Sec. 2200: *Category “B” – Any discharger not included above that has physical, chemical, or biological treatment systems (except for septic systems with subsurface disposal), or any Class II or Class III waste management units.*

The construction of a bay sediment cap constitutes a “physical treatment system” that is intended to permanently isolate the residual elevated concentrations of waste constituents in the bay sediments. The complexity of monitoring and underwater cap is comparable to the complexity of monitoring a closed Class II or Class III waste management unit. The potential failure of the physical treatment system (cap) could result in the release of environmental pollutants into the surface waters of San Diego Bay, causing violations indicated in Category 2 above.

Section C, Cap Construction and Maintenance Specifications, Paragraph 2(a): See response to paragraph 16 above.

RWQCB Staff Response: Discharge Specification Section C.2(a) has been revised as follows:

The cap shall be maintained such that ~~sediments in San Diego Bay containing pollutants in~~ concentrations in sediment samples collected from the top of the cap and/or beneath the armor layer of the cap do not exceed excess of the “Action Levels”, ~~those listed in Finding No. 167 (dry weight) are contained below the main sand cap.~~

Section C (1)(a) and (2)(c): The habitat cap consists of 3-feet thick sand and a geotextile layer, no gravel will be placed.

RWQCB Staff Response: Discharge Specification C.1(a) does not contain a reference to the Habitat Cap. However, we concluded that the comment is intended to focus on Discharge Specification C.1(b), which does reference construction details of the Habitat Cap. Discharge Specification Section C.1(b) has been revised as follows:

Habitat cap: The design of the habitat cap includes a one-foot thick basal layer of sand overlain by a geotextile, ~~a one foot layer of well graded coarse grained aggregate layer to act as a protective layer for the geotextile~~ layer and a final layer of two feet of poorly-graded sediments with grain sizes ranging from medium to coarse sand to provide a suitable substrate to support the overlying eelgrass habitat. The function of the geotextile layer is to help isolate any underlying environmental pollutants and protect against bioturbation into the underlying sediment; and two feet of poorly graded sediments with grain sizes of approximately 0.5 mm (medium to coarse sand) will be used to provide a suitable substrate for eelgrass.

Discharge Specification Section C.2(c) has also been revised as follows:

The habitat cap area shall be maintained at a minimum thickness of ~~four~~ three feet including basal one foot layer of sand overlain by a geotextile layer, ~~a one foot layer of well graded coarse grained aggregate layer to act as a protective layer for the geotextile~~, and a final layer of two feet of poorly graded sediments with grain sizes ranging from medium to coarse sand to provide a suitable substrate to support the overlying eelgrass habitat. Additional sand ~~and/or gravel~~ shall be added to any area where the habitat cap thickness is less than ~~three~~ two and a half feet to maintain a minimum ~~four~~ three-foot total thickness. If visual inspections indicate the integrity of the habitat cap has been compromised, additional sand ~~and/or gravel~~ shall be placed to increase the habitat cap thickness back to ~~four~~ three feet. The cap shall be repaired as expeditiously as practical.

Section C (f): Please replace "during the cap monitoring program" with "at the top of the sand cap." This change will clarify that these levels only apply to the sediment within the cap area.

RWQCB Staff Response: *Collection and analysis (monitoring) of sediment samples is required for the habitat cap, those sediments that accumulate on top of (above the armor layer) the engineered cap, and sediments located beneath the armor layer of the engineered cap. Discharge Specification Section C.2(f) has been revised as follows:*

If pollutant concentrations are determined to exceed ~~thresh-hold~~ Action Level concentrations ~~criteria~~ (pollutant concentrations as dry weight) in sediments, collected ~~during the cap monitoring program from the top of the cap and/or beneath the armor layer of the cap.~~; then additional investigation and/or repair work shall be initiated by the discharger. The "aAction lLevels" referenced in this Order shall be as follows:

Contaminants of Concern	Concentration (mg/kg by dry weight)
<i>Copper</i>	<i>264</i>
<i>Lead</i>	<i>88</i>
<i>Zinc</i>	<i>410</i>
<i>Total Polyaromatic Hydrocarbons (TPAHs)</i>	<i>3.47</i>
<i>Polychlorinated biphenyls (PCBs)</i>	<i>0.11</i>
<i>Total Petroleum Hydrocarbons (TPH)</i>	<i><14</i>
<i>Tributyltin (TBT)</i>	<i>0.121</i>

Sediment concentrations of COCs above the "action levels" referenced above will cause the Discharger to undertake a study to evaluate the cause(s) of failure then proceed to develop and implement a corrective action plan. ~~trigger the need for the discharger to perform further work (investigation and/or corrective action) as specified in the Monitoring and Reporting Program.~~

Section C (g): The District has now ownership or control over either Switzer Creek or 8th Avenue storm drains and should, therefore, not be obligated to conduct any testing or cleanup of those storm drains. The District requests that the RWQCB work with the City of San Diego to maintain the cleanliness of these two discharge points.

RWQCB Staff Response: *Also see our response to the Port's comment referenced as "Paragraph 13" above. Discharge Specification Section C.2(g) has been revised as follows:*

If monitoring results from the top of the engineered and/or habitat caps indicate that concentrations of contaminants of concern exceed action levels, ~~The~~ the discharger shall

~~undertake storm drain/outfall sampling implement the contingency actions described in Section F.3 J of Monitoring and Reporting Program No. R9-2004-0295. The discharger shall report results to the Regional Board as required and develop recommendations for further action if the results indicate that upstream catch basin sediment exceeds the action levels identified in Specification No. C.2(f) of this Order.~~

Section C (h): The requirement for investigation and repair to occur within 72 hours of "break-through" is vague and ambiguous and should be clarified. Adding "through the engineered cap" after breakthrough would clarify the requirement. The subsequent requested action should be changed to a requirement for a corrective action workplan to be submitted within 45 days, which is an expedited period for development of an environmental investigation plan.

RWQCB Staff Response: *The discharger should initiate an investigation within 72-hours of making the determination that a breakthrough of waste constituents/pollutants has occurred from beneath the cap. Discharge Specification Section C.2(h) has been revised as follows:*

If the results from sediment sampling, as described in Sections F.1 or F.2 of Monitoring and Reporting Program R9-2004-0295, indicates a breakthrough of waste constituents/pollutants from the sediment below the engineered cap or an exceedance of contaminant concentrations in the top of the sediment cap above the Action Levels listed in Maintenance Specification C.2(f) of this Order; ~~repair and/or investigation~~ the discharger shall initiate an investigation ~~shall begin~~ within 72 hours of the determination. A corrective action plan, if required, shall be submitted to the Regional Board within 45 days of discovering the exceedance. ~~The minimum pollutant concentrations in the sediment, or action levels, requiring cap repair and/or investigation are as specified in Specification No. C.2(f).~~ The Regional Board may also require additional repair(s) and/or investigation as reasonably necessary.

Section E, paragraph 11, Standard Provisions: As discussed above, the District should not be required to comply with financial assurances requirements.

RWQCB Staff Response: *We do not agree that the Port District is exempted from requirements to provide evidence of financial assurances. Finding No. 6 remains as included in the tentative Order. However, after further discussion between the Port and RWQCB staff, the following revisions were made to tentative Order R9-2004-0295. Finding No. 17 (see response to the Port's comment labeled as "Paragraphs 6, 17 and E.11:" above) and Provision No. 11 (see below) have been completely revised and replaced with the following:*

FINANCIAL ASSURANCES FOR CLOSURE, POST-CLOSURE AND CORRECTIVE ACTION

- (a) Port shall provide assurances of financial responsibility for post- closure maintenance and monitoring in an amount of not less than \$18,700 per year

indefinitely, or for as long as the waste in the containment cell poses a threat of pollution or nuisance to waters of the state.

- (b) Port shall provide assurances of financial responsibility for reasonably foreseeable cleanup and abatement associated with the containment cell in an amount of not less than \$500,000.

Monitoring and Reporting Program: The District requests that the Executive Officer be allowed to approve the monitoring and reporting program for the Campbell Shipyard Cap after the October 13, 2004 RWQCB meeting. The main reason for requesting this approach with respect to the monitoring and reporting program is that the tentative monitoring and reporting program currently includes sampling of cores within the armored cap area, which is impractical using conventional coring methods. However, pore water and permeable media monitoring stations are being considered for monitoring beneath the cap armoring. This monitoring plan within the armored cap area will require further refinement, which is ongoing. The District is currently working with a technical committee including local Bay Council environmental group representatives pursuant to the above-mentioned MOU, on a proposed work plan, which will address this issue. The District and Bay Council would like to present this plan to the RWQCB by December 2004. This monitoring program outline could then be incorporated by the RWQCB in the project's monitoring and reporting program in anticipation of the start of construction by March of 2005.

RWQCB Staff Response: *We disagree with your request to approve a monitoring program after the agenda item during the meeting on October 13, 2004. Applicable Administrative Procedures require that all WDRs have a monitoring program. In an attempt to address the administrative requirements and provide the discharger with some flexibility, the current Monitoring and Reporting Program requires the discharger to prepare and submit a Sampling and Analysis Plan (SAP) - per Section F.1(b) and Attachment No. 1, and Quality Assurance Project Plan (QAPP) - per Section F.1(c) and Attachment No. 2 to the Monitoring and Reporting Program. This approach was taken to allow the discharger the flexibility to develop and propose their rationale, protocols and preferred methods for complying with the monitoring requirements of tentative Order R9-2004-0295. The Port is required to present your proposed SAP and QAPP by December 31, 2004.*

The following other comments pertaining to the construction monitoring are provided. Section D, paragraph 2(b) the use of a stadia rod and underwater survey tape are no longer used in the survey field. Electronic equipment such as a Fathometer are industry standards for underwater measurements. The District proposed to use a Fathometer.

RWQCB Staff Response: *Section D.2(b) does not contain a reference to the use of a "stadia rod." However, we suspect the comment is actually focused on Discharge Specification D.2(c), which does reference to the use of a "stadia rod." Discharge Section D.2(c) has been revised as follows:*

The perimeter berm shall be inspected for damage such as settling, slope failure, etc. Berm monitoring requires a survey of the average elevation of the crest of the berm and the average width at both the base and crest of the berm. The dimensions of the berm shall be measured using surveys with a fathometer. ~~stadia rod and an underwater surveying tape.~~

Section F (3)(a) and (b): Please explain the requirements to sample the City of San Diego's storm drain and creek.

RWQCB Staff Response: *See our response to the Port's comment labeled as "Paragraph 13" above. The Port needs to ensure that storm water discharges do not adversely impact the integrity of the cap or cause pollutants to accumulate upon the cap.*

The tentative Order has been modified to remove the requirements, in Section F.3 and I.2, for regular monitoring of the 30-inch storm drain and Switzer Creek. Instead, collection of sediment samples from the storm drain and Switzer Creek will be required under Section J.1(d) - Contingency Monitoring Plan, in the event that pollutant concentrations are detected [above designated action levels in Discharge Specification C.2(f) of tentative Order R9-2004-0295] in sediment samples collected from the surface of the cap.

Section I (a): Please explain the requirement for 2-year sampling after the 5-year requirement for the habitat restoration (eelgrass survey) area.

RWQCB Staff Response: *The requirement for sampling every 2-years following the 5-year requirement has been deleted from the Monitoring and Reporting Program. If the eelgrass restoration does not meet its success criteria within the 5-year monitoring period, additional monitoring will be necessary.*

Section J (1)(c) request biological tissue sampling: Should tissue of animals found on the cap be analyzed or should a standard EPA Green bioaccumulation phase test be performed?

RWQCB Staff Response: *The monitoring requirements are intended to refer to tissue sampling. However, the Port should include its proposed/preferred method for collecting and analyzing representative biological samples in the Sampling and Analysis Plan (SAP) required in Section F.1(b).*